

ProClaim

Crawford's Client Newsletter

Building a Better Fraud Trap

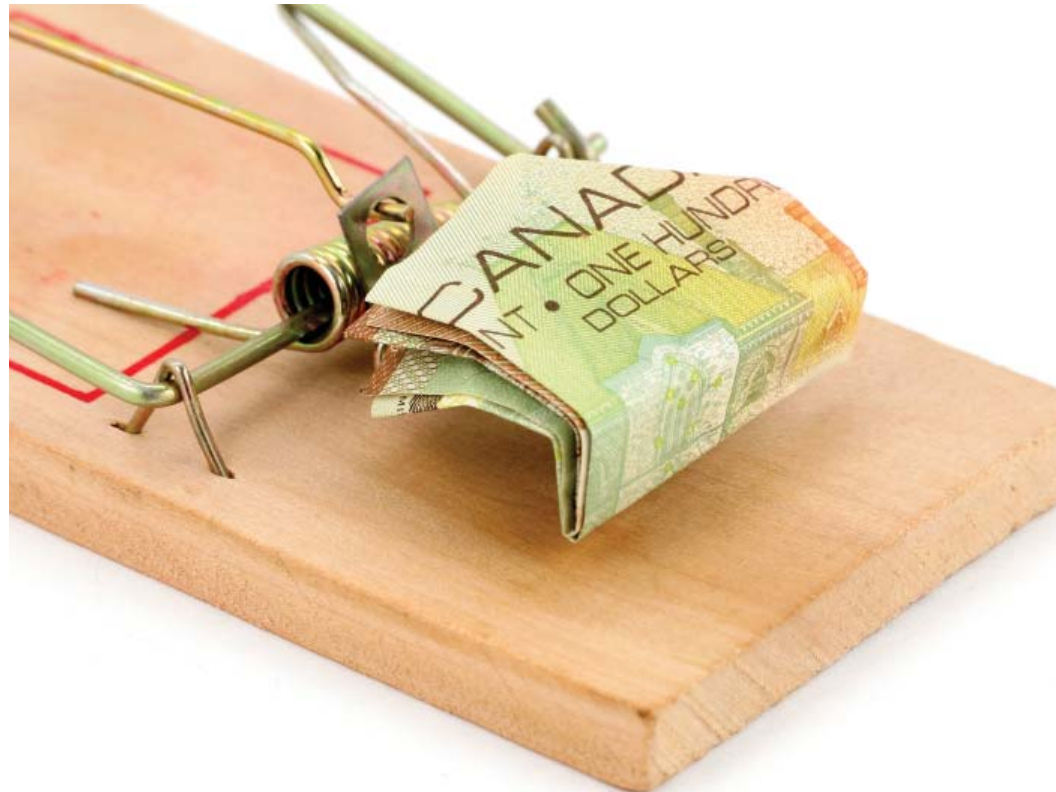
The nature and scope of fraud is increasingly well known throughout the insurance industry, with estimates in Ontario alone varying between \$770 million and \$1.6 billion per year (or roughly 9-18% of total auto insurance premiums).

Most agree that fraud is a significant threat and problem. Today, insurers, adjusters and other groups are turning their attention to preventive strategies.

For adjusters like Jim Eso, senior vice president, Property & Casualty, Crawford & Company (Canada) Inc., the right tactic depends on the type of fraud at hand – opportunistic or organized.

"When you look at opportunistic fraud, this exists across Canada and it can involve such things as padding of claims, exaggeration of amounts insured or arson," Eso says. "Adjusters are well trained to uncover this type of fraud right from the first notice of loss. We can work closely with our insurance partners on investigating suspicious losses and taking a proactive approach to verifying the claim."

He notes that adjusters "with the right skill sets need to handle the right types of



claims in their areas of expertise. Fraud awareness is what adjusters need to be concerned about. This approach is one of our two main priorities – fraud detection and prevention of bad faith claims."

However, opportunistic claimants do not seem to be the "smoking gun" behind the increase in fraud figures over the last 3-5 years, especially in Ontario.

"Organized crime, particularly in Ontario auto insurance, is a growing concern," Eso says. "This is where a lot of the fraud dollars are going in today's environment. Certainly, with the accident benefits product in Ontario, there has been documented evidence of increased staged

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Fraud trap

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accident rings. Organized fraud rings tend to show repeat patterns involving multiple claims across different insurance companies."

Two of the most effective tools to fight organized fraud involve increased regulatory powers and improved technology, particularly in the area of predictive analytics, according to Eso.

"I think regulation has a role to play in fraud prevention, particularly when it comes to certain groups, such as health care providers, towing companies and legal or paralegal firms," Eso notes. "We are working in partnership with regulators to administer the Ontario auto insurance product, which has benefited from the reforms introduced in 2010. This will help in reducing insurance fraud, because there are fewer opportunities for fraudsters to abuse the system. They tend to move on to other areas."

In addition to reform of the auto product, the Ontario Auto Insurance Anti-Fraud Task Force is releasing its report in late 2012 on how best to address the issue of organized crime rings. With insurance fraud on the radar screen as a highly visible industry issue, insurance companies, associations and adjusters are targeting organized crime and pursuing specific strategies to break up rings.

Early indications from the task force show that it will likely focus on several key areas, including regulation of health care clinics, oversight of the towing industry, and increased powers for the Financial Services Commission of Ontario (FSCO) in terms of administrative penalties. Other measures could include broader civil immunity protection for insurance companies that investigate fraud rings and improved privacy sharing provisions for insurers when it comes to information concerning fraud.

There are several potential avenues to more closely monitor health care clinics, some of which have been floated by both IBC and the task force. These include placing restrictions on ownership of clinics, designating a regulated health practitioner to be responsible for the integrity of the clinic and its business practices and imposing appropriate sanctions for unethical or fraudulent behaviour. The task force cited the example

of Hillsborough County, Florida, which passed in September 2011 an ordinance requiring the licensing of any medical clinic that provides treatment or therapy to patients claiming injury due to an automobile accident.

Regulation of the towing industry may pose a more daunting challenge. The task force noted in its preliminary report that allegations of paid referrals and improper billing have surfaced regarding tow truck operators. However, it is unclear which agency of the provincial government would regulate practices in the towing industry or if municipalities, which often license operators, would be involved.

Granting insurers broader immunity protection could be an easy measure for

"If you have access to the data and the right analytic tools, you have a much better chance of spotting some of these rings and breaking them up..."

the government to adopt. Insurers are pursuing civil actions and hitting fraud rings where it hurts the most: their wallets. However, they are vulnerable to counter lawsuits and allegations of bad faith if an investigation goes wrong.

A related topic for the insurance industry is information sharing in the context of federal privacy legislation. While insurers are subject to PIPEDA, there are concerns that this may restrict information gathering, data sharing and investigative techniques involved in fraud detection. Bill C-12 was introduced in Parliament last year as legislation designed to update PIPEDA, but it has not moved to the order paper.

The Ontario task force on fraud is looking at other options, such as "whether the consent provisions embedded in applications for auto insurance and applications for benefits... might be amended in a way that would be consistent with privacy legislation, but provide greater certainty about the ability to share information for the purpose of detecting and preventing fraud."

Eso acknowledges that regulations represent an important component of fraud prevention. However, he says the insurance industry already has many of the weapons it needs to tackle organized fraud rings. And a prime one is technology.

"I think the insurance industry has the tools it needs to investigate, analyze and attack fraud," notes Eso. "However, we need insurance companies to support one version of a data solution. In this way, adjusters can access this data and tie in their own files to detect fraud patterns. I think data analytics is critical now and for the future. More insurance companies are making the investment in these types of data collection and analysis tools and that is encouraging."

In particular, data analytics and predictive modeling are allowing insurers to uncover complex or organized fraud activities using both structured and unstructured data. According to the anti-fraud task force's interim report, this new technology is beginning to take shape.

"Tests this year using three different software programs have led insurers for the majority of Ontario drivers to agree to form a new company," it stated.

"This company would charge its owners for the cost of operation and employ state-of-the-art software to do a rapid analysis of new claims that would highlight the most suspicious among them. This would trigger further research by insurance adjusters and investigators, while allowing efficient processing of claims that are not suspicious."

"If you have access to the data and the right analytic tools, you have a much better chance of spotting some of these rings and breaking them up," Eso says. "At Crawford, we handle thousand of claims that involve a significant amount of data. We are looking to work closely with insurance companies to access their data and compare it to ours. Because of our size and the number of assignments we receive, I think Crawford has a major role to play in this kind of fraud detection."

There is a growing consensus that a concerted effort is required from regulators, the insurance industry and even consumers to address organized fraud rings. A combination of solid investigative skills and expertise from adjusters and investigators, proactive regulations to curb abuse and sophisticated technological solutions may yield the best approach to building a better fraud trap. **P**

Keeping an Eye on Ergonomics

Many people hear the word “ergonomics” and their first thought turns to the design of a chair or desk. While that is part of the role, a true ergonomics program will fully address the interaction between workers and their job demands.

There is a focus on how the actual “work” and environment affects the worker, according to Maureen Roper, a supervisor with Crawford & Company (Canada) Inc. and an occupational therapist.

“Ergonomic assessment and intervention can be associated with decreased injury onset, as well as early return to work after injury and improved outcomes with respect to remaining at work,” Roper says.

One outcome of a poor ergonomic work environment is a rise in the frequency of musculoskeletal disorders (MSDs). These type of injuries, which affect muscles, tendons, ligament and nerves, may include tendonitis, carpal tunnel syndrome, back pain, sore muscles, amongst others.

Perhaps surprisingly, in Canada, MSDs account for most lost-time injuries, the highest lost-time claim costs and the most lost time/work days of any type of injury, according to the Canadian Centre for Occupational Health and Safety (CCOHS). Workers’ compensation board figures from various jurisdictions indicate that MSDs are responsible for 25% to 60% of total annual compensation claims.

The risk factors for these types of injuries include awkward or static postures, repetition, long task duration, excessive force, to name a few. The claims and losses that emerge in the disability area include absenteeism, decreased productivity and increased workers’ compensation (WSIB) and health care costs.

Risks associated with ergonomics and MSDs are exacerbated by several challenges, such as increased demands on workers due to downsizing or cost constraints, the perceived costs associated with ergonomic retrofits, an aging workforce, job sharing or shared workspaces and a limited understanding of ergonomic issues by senior managers or



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company owners, according to Roper.

These challenges can be overcome through a comprehensive ergonomics program that Roper says can “proactively prevent injuries from occurring.” This involves reviewing potential MSD hazards related to workstation design, technology, equipment, tools and environmental factors. This program should involve early identification of MSD onset and related ergonomic issues, while also developing corporate policies and integration measures based on best ergonomic practices, she adds.

However, ergonomics should also move beyond the purview of health care experts or human resources to the whole organization, Roper argues.

“I think there should be expanded accountability and involvement in ergonomics to those people outside the health and safety and human resources departments,” she notes. “This could involve educational programs for management, as well as employees, to be able to identify potential risks for MSD.”

Roper says she is starting to see more employers in all sectors become educated on workplace design and ergonomics. This enhanced knowledge should be supplemented with specific guidance and information geared to corporate

management regarding the role of ergonomics in the work environment.

Considering the design of the modern work environment and the prevalence of new technological tools, such as tablets and smart phones, it’s no wonder that ergonomics has had to evolve as a profession to promote workplace safety.

In addition to new technology, ergonomics will also evolve to address the needs of mobile employees and the “home office,” where Roper notes every office environment is different.

Other trends include addressing ergonomics in the design of new processes, equipment, layouts and products, as well as looking at “adjustability” of new products and designs to accommodate a wider array of employees at an ergonomically optimal level, Roper observes.

The trend in ergonomics today generally is to take a much more active role to assessment, redesign and prevention – instead of waiting for the inevitable soft tissue injuries to arise.

“We are seeing a movement from reactively addressing ergonomic issues to proactively addressing them,” Roper says. “Companies are willing to spend money to prevent injuries – rather than paying after the injury has occurred.” **P**

A Wave of Risk in the Shipping Sector

On January 13, 2012, the Costa Concordia, which was carrying roughly 4,200 people, ran aground off the island of Giglio in Italy's Mediterranean sea. Thirty-two people died in the disaster, which was attributed to human error.

The ship's captain, Francesco Schettino, faces potential charges of abandoning ship and multiple counts of manslaughter.

The insurance loss from the Costa Concordia is estimated at between \$850 million to \$1 billion, with claims still being tabulated for hull and machinery and liability.

2012, in fact, saw an unusually high number of large shipping losses, including a fire that broke out in one of the engine rooms of the Costa Allegra as it sailed in the Indian Ocean on February 27. The ship, which was severely damaged, was towed to the Seychelles Islands. In addition, the ferry MV Rabaul Queen sunk off the coast of Papua New Guinea on February 2, resulting in the deaths of more than 160 people.

While the much-publicized disaster of the Costa Concordia and others grab news headlines, Roland Paxton, vice president, Global Marine Services for Crawford & Company (Canada) Inc. says that the overall safety record of the maritime shipping and passenger industry is positive.

"It is our experience at Crawford for both actual shipping accidents and, more importantly to us, container cargo shipments are indeed down in numbers," Paxton notes. "Shipping safety has greatly improved over the years."

Indeed, the numbers bear this out. Despite a tripling of the world fleet to over 100,000 ships in 2010, and a total fleet tonnage now approaching 1 billion gross tonnes, shipping losses have decreased significantly from 1 ship per 100 per year (1912) to 1 ship per 670 per year in 2009, according to a recent report from Allianz Global Corporate & Specialty.



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"Marine transport can be regarded as one of the safest means of passenger transport overall: in Europe, it is ranked after rail, air and bus/coach as the fourth safest means," Allianz noted in the study, *Safety and Shipping 1912-2012, From Titanic to Costa Concordia*.

However, even with improved safety, the shipping industry faces safety and risk issues on an ongoing basis.

"It is clear to see that challenges remain and these include increased vessel sizes and smaller crew numbers, which give rise to the 'human element' factor.."

"It is clear to see that challenges remain and these include increased vessel sizes and smaller crew numbers, which give rise to the 'human element' factor," Paxton notes. "There is always the big question, particularly for cruise ship management, of emergency response, evacuation and, as was the case with the

Costa Concordia, event/course mitigation strategies."

According to the Allianz report, most losses can be attributed to "human error" – a broad category estimated to be responsible for between 75%-96% of marine casualties. Pressures of competition (often shore-based) and fatigue are frequently cited as significant causes – a particular matter of concern in busy shipping areas.

The most common primary causes of shipping losses are foundering (49% of losses), wrecking/stranding (18%) and fire/explosion (15%) while hull or machinery failure only accounts for around 2% of losses, Allianz notes. Dry (bulk) cargo vessels have higher than average loss rates (44% of losses, despite representing 20% of the world fleet by number). Conversely, tankers, container vessels and offshore industry ships have relatively low loss rates.

Paxton cites a range of emerging risks that face the modern shipping industry. These include:

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- Threats to public safety and property where oil spills, for example, could contaminate both terrain and other marine structures.
- Shipping opportunities and activities in polar waters, where climate change is opening up access to previously impassable seaways but also challenges in terms of ice navigation, environmental concerns, and design/construction standards.
- Piracy, especially off Somalia and the Horn of Africa where 28 ships were attacked in 2011, according to Allianz. The economic impact of piracy was estimated to be around \$7 billion in 2011.

For independent adjusting firms, a key goal in the shipping industry is to track loss development and pursue loss control initiatives, Paxton says. "One of the main challenges to Crawford, as surveyors, involves the reduction of claims both cargo and hull and machinery."

Risk management represents the most effective way to reduce losses and

the shipping industry has embraced new methods to ensure the safety of passengers and the preservation of cargo.

"There is without question an improved risk management aspect of the transportation business strongly being felt in the marine area, coupled to the

"For independent adjusting firms, a key goal in the shipping industry is to track loss development and pursue loss control initiatives, according to Paxton."

streamlining of shipping core business processes with increased sophisticated containerization systems in place," Paxton observes.

Specifically, risk control measures involve technology, such as navigation aids and global satellite positioning, but also extend from ship building construction to control terminal and public safety/security, according to Paxton.

"Loss development and risk management is an ongoing feature of the transportation world," he says. "Risk management will continue to grow in its importance to both ship owners and marine insurers."

One risk that is not as much in the hands of insurers, adjusters or shipping companies is the state of the global economy – and its impact on the transportation industry in general. The global insurance premium volume for the shipping industry

was \$31.9 billion in 2011, according to the International Union of Marine Insurers (IUMI). Cargo premium volume stood at \$17.2 billion.

While these numbers sound impressive, Paxton says there is a sluggishness to the shipping industry that reflects uncertainty in the broader economic environment.

"With all shipments of cargo, the

Continued on page 8...



Crawford Global Technical Services

GTS News

Paul Hancock, national director, Crawford Global Technical Services, is pleased to announce the addition of the following adjusters to the GTS Team.



Jean-Yves Bernier
Vice President, Global Technical Services, Québec Region
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Jean Yves Bernier has recently been appointed as vice president of Crawford Global Technical Services (GTS) for the Québec Region. During his 36 years in the insurance industry, Bernier, has gained a wealth of experience in various technical and management positions. He has handled a wide variety of claims, including large commercial, property and liability losses, as well as complex claims resulting from catastrophic events.



Glenn Nadworny
Executive General Adjuster
Vancouver, BC
Glenn.Nadworny@crawco.ca

Glenn Nadworny has joined Crawford's GTS team in western Canada. He holds a degree in Civil Engineering and worked for several years in that industry before turning to adjusting in 1999. In 2008, he moved to New Zealand, and worked both in the loss adjusting (TPA) and insurance fields as Construction and Engineering Lines Underwriting Manager.



Jay Strano
Accounting Leader
Toronto, ON
Jay.Strano@crawco.ca

Jay Strano, CMA, has been appointed accounting leader for Crawford's GTS division. Reporting to Paul Hancock, national director, GTS, Strano will act as a direct liaison for insurance and legal professionals in the quantification of damages as a result of insured losses. He will also be providing forensic consulting, loss analysis, and valuation in several areas of operation. Jay has over 12 years of experience in the financial advisory services practice.

The Limitations Act and Family Law Act Claims

The Limitations Act, 2002 (Ontario) is a statute whose general rule is that a claimant must start an action within two years from the date the claim arises.

A claim arises when a person becomes aware that they have an action. A claim is said to arise when it is "discovered". The Limitations Act applies to all actions in Ontario.

There are other elements to the Limitations Act. A considerable part of the act deals, for instance, with claims by persons under a disability and how those are dealt with. However, the main principle is that of "discoverability".

The discovery of a claim might very well result in a valid statement of claim issued beyond what might be considered the traditional notion of two years from the date that the incident.

An added complexity is that a claimant must exercise due diligence to determine if there is a claim. The consequences for failing to do so can result in the expiry of the limitation period.

Two recent Ontario cases have now affirmed the following principles:

1. Family Law Act R.S.O. 1990, c.F.3 claims ("FLA claims") are derivative of the principle plaintiff's claim (meaning that the FLA claims would not exist but for the issues raised by the plaintiff in the main action) and are not subject to the same limitation period as the principle claim.
2. As long as the principle action has been brought within the two year limitation period applicable to the plaintiff, any FLA claim may be added after the expiry of that limitation period, subject to considerations of discoverability of each individual FLA claimants' potential claim.

Giroux v. Pollesel, 2012 CarswellOnt 7531

The plaintiff was injured in a 2004 motor vehicle accident (MVA) and a statement of claim was issued within the two-year limitation period in 2006. The plaintiff was able to maintain employment for 3.5

limitation period then no FLA claim can succeed as an FLA claimant's entitlement is based solely on there being a valid claim by the principle plaintiff (derivative of the plaintiff's claim).

For full case texts, go to www.canlii.org and search "Giroux v. Pollesel, 2012 ONSC 2203".

Wilson v. Arseneau, (2012) 111 O.R. (3d) (Ont. S.C.)

As above, the judge confirmed that FLA claims are derivative of the principle plaintiff's claim.

What is different and notable in this case is that it addresses the statutory verbal threshold under s.267.5(7) of the Insurance Act, R.S.O. 190, c. I.8 and its applicability to FLA claims where the initial two year limitation period has been passed. In this matter the plaintiff was injured in an MVA on March 15, 2008 and brought an action in February 2010, well within the two year limitation period. The plaintiff suffered soft tissue injuries in the accident and also suffered from depression. The accident exacerbated injuries she had suffered in an earlier MVA. Tragically, the plaintiff committed suicide in December 2010 and her suicide note stated that "the insurance company killed me" and that "the car accident pushed me over the top". In June 2011, the plaintiff sought to add family members to the statement of claim as FLA claimants – this was opposed by the defendants on the basis that the claims were out of time.

The judge accepted (based on affidavit evidence) that the FLA claimants did not feel they had a claim which would exceed the statutory verbal threshold prior to the plaintiff committing suicide. It was only once the plaintiff was dead, arguably as a result of the MVA that the loss of care, guidance and companionship required to ground a claim under the FLA crystallized at a point where the damages could reasonably be seen to exceed the threshold. It was only then that they could

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years after the accident, but had ongoing issues from the MVA which required surgery in 2008 and 2009. The plaintiff was unable to return to work and her employment was terminated in June 2010. The plaintiff sought to amend the statement of claim to add family members as plaintiffs more than six years after the accident. A motion judge granted the plaintiff's motion to amend the statement of claim and the defendants appealed to the divisional court. The divisional court denied the appeal.

The divisional court upheld the motion judge's reasons and confirmed that as long as the main action is brought within the applicable two year limitation period, the FLA claimant is entitled to recover damages subject to their own individual limitation period defined by the discoverability principle (when they discovered they had a claim). If the principle claim is brought outside the two year

The Fourth Annual Crawford Global Day of Service

On September 29th, Canadian Crawford employees demonstrated their commitment to their communities by participating in the fourth annual Crawford Global Day of Service. The event sees Crawford employees around the world collectively volunteer on one day in local projects of their own choosing. Here in Canada twelve projects were arranged across the country.

Some of the organizations that benefitted from time, items and monetary donations from Crawford employees are: food banks in Barrie, Orangeville, Newmarket, Hamilton and Toronto, Ontario; Canadian Blood Services in partnership with the Partners for Life program; the Salvation Army; The Winnipeg Harvest in Winnipeg, Manitoba; the SPCA in Regina, Saskatchewan; the Laurel Creek Conservation area in partnership with 10,000 Trees in Waterloo, Ontario; the CIBC Run for the Cure; the University of Saskatchewan in partnership with the Insurance Institute Ambassador Program and the Rescue Mission in Regina, Saskatchewan. **P**



1

1. *The Winnipeg event. Front row, L-R: Jules Giasson, Breanne Giasson, Colton LaBrash and Randy LaBrash. Back row, L-R: Barbara Lequee, Gary Petrishen, Leanne Foley-Campbell and Andrea Montagnon.*



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2. *The Waterloo event. Back row, L-R: Steve Anderson, Janet Huffman, Pat Van Bakel and George Kehagias. Front row, L-R: Brett Van Bakel, Erika Van Bakel and Despina Kehagias.*

Crawford & Company 3rd Quarter Financial Results

Crawford & Company's third quarter 2012 consolidated revenues before reimbursements totaled \$302.1 million, an increase of 7% from \$283.0 million in the 2011 third quarter.

Mr. Jeffrey T. Bowman, chief executive officer of Crawford & Company, stated, "During the 2012 third quarter our Legal Settlement Administration segment was heavily involved in the Deepwater Horizon class action settlement. We expect activity in this special project to continue for the remainder of 2012, although at a reduced rate.

"In the Broadspire segment, we continued to see substantial improvement over the 2011 comparable period results of that segment, as we reduced operating losses by \$8.8 million for the year-to-date period through revenue increases and cost man-

agement. Our 2012 third quarter claims activity was up 4.4% over the 2011 third quarter. We remain focused on driving sequential operating improvement in this segment. The turnaround of Broadspire is one of the key objectives for our management team and we are optimistic that Broadspire will end the year profitably. "Our EMEA/AP segment results continue to be driven primarily by the ongoing handling of catastrophic flood losses in Thailand. We have been encouraged with the operating performance of this segment during the 2012 third quarter, which has seen strong growth in revenues and operating earnings.

"The Americas segment saw an increase in claims activity during the 2012 third quarter resulting from Hurricane Isaac in the U.S. and catastrophe related claims in Canada. This helped generate sequential

improvement over the 2012 second quarter results of this segment, despite relatively weak industry-wide claim volumes which have persisted throughout 2012."

Mr. Bowman concluded, "We remain focused on our core strategic and operational goals and expect to further expand market share, drive efficiencies and capitalize on emerging opportunities as we enter 2013. In order to put the Company on a better financial footing in 2013, we anticipate taking a restructuring charge in the 2012 fourth quarter of approximately \$5.0 million, before tax. We expect the cost efficiencies gained by our actions to produce annualized operating savings of approximately \$4.2 million in our North American operations, helping to improve future operating margin performance in our Americas and Broadspire segments." **P**

Happy Holidays from Crawford & Company (Canada) Inc.

It's hard to imagine that the holiday season is already upon us after what's been a very busy and interesting 2012. All of us at Crawford would like to express our appreciation to our clients and friends for their business and support throughout the year.

In lieu of a holiday card, Crawford has made a donation to Crawford Cares on behalf of its clients and employees. We wish you and your families all the very best for this holiday season and for the coming year.

Wave of Risk *(continued from page 5)*

demand for this is reflected by the global economy, which is challenging throughout the world and therefore throughout the shipping industry," he concludes.

"We are continuing to see little activity

in the market and there continues to be a fall of overall premiums as the marine underwriting market softens. There is without question a lackluster feel to the marine insurance market currently." **P**

Limitations Act *(continued from page 6)*

have 'discovered' their claim. The judge confirmed that if the main action was brought outside the two year limitation period, the FLA claims would fail.

Thus, we recommend that adjusters be on the look-out for potential FLA claims lurking behind the scenes, particularly where the plaintiff's health appears to be on a downward spiral after the accident. **P**

For full case texts, go to www.canlii.org and search "Wilson v. Arseneau, (2012)".

Notes by Daniel Marcovitch, B.A., LL.B.

Crawford Legal Services Update is provided by Paul Famula, manager, Crawford Legal Services.



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